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HAROLD B. WILLEY,

IN THE

SUPREME COURT OF THE UNITED STATES

No. 488

ANDERSON BROTHERS CORPORATION

Appellant,

vs.

BOARD OF SUPERVISORS OF
WASHINGTON COUNTY, MISSISSIPPI

Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JURISDICTIONAL STATEMENTS FOR AN APPEAL TO THE UNITED STATES SUPREME COURT

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IN THE

SUPREME COURT OF THE STATE OF MISSISSIPPI

SEPTEMBER TERM, 1954

No. 39,401

ANDERSON BROTHERS CORPORATION

Appellant,

vs.

BOARD OF SUPERVISORS OF WASHINGTON COUNTY, MISSISSIPPI

Appellee

JURISDICTIONAL STATEMENTS FOR AN APPEAL TO THE UNITED STATES SUPREME COURT

The facts in the case are that on January 16, 1953, the Sheriff of Washington County, Mississippi, levied a writ of attachment on certain tangible personal property of the appellant then in the possession of and located upon a lot owned by the appellant in Washington County, Mississippi. The writ was issued, without bond, by the Circuit Court of Washington County, Mississippi, acting through the Clerk thereof, upon the affidavit of the Sheriff and Tax Collector of Washington County, Mississippi, that the appellant was indebted to him as Tax Collector in the sum of $9,586.50. (Record p. 30) In order to release its property from the attachment and to withhold the payment of the sum demanded by the Tax Collector the appellant filed with him a bank guaranty of

the payment thereof dated April 10, 1953, and reserving the right to test the validity of the demand of the Tax Collector. Thereafter and prior to July 1, 1953, the property attached was shipped out of the State of Mississippi. (Record p. 31)

In July, 1953, the Tax Assessor of Washington County, Mississippi, placed the property of the appellant here involved on the 1953 Personal Assessment Roll of Washington County, Mississippi, at an agreed valuation of $249,000.00 for ad valorem taxes thereon for the year 1953. (Record p. 10)

Within the time provided by law, to-wit, at the August, 1953, meeting of the Board of Supervisors of Washington County, Mississippi, the appellant objected to said assessment on the grounds that:

1. There is no statute authorizing the assessment and collection of ad valorem taxes on tangible personal property in the manner said taxes of $9,586.50 were attempted to be assessed and collected.

2. The tangible personal property attempted to be assessed was not kept permanently or for the greater part of the year in Washington County, Mississippi.

3. The tangible personal property attempted to be assessed was not being used in Washington County, Mississippi, on January 1, 1953, in carrying out contract work for a drainage district, a road district, a levee district, bridge building or any other kind of contracting work.

4. The tangible personal property attempted to be assessed did not acquire a taxable situs in Washington County, Mississippi, for the year 1953.

Record pp. 14-22

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At its August, 1953, meeting the Board of Supervisors of Washington County, Mississippi, entered an order, reciting that after hearing the objection of the appellant alleging that said property was not taxable under the law at all, rejecting said objection of the appellant. (Record pp. 22-23)

Within the time and in the manner provided by law the appellant appealed to the Circuit Court of Washington County, Mississippi, from the action of the Board of Supervisors of Washington County, Mississippi. The case was tried by said court upon an agreed statement of facts showing:

1. That the property involved was not in Washington County, Mississippi, permanently or for the greater portion of the year 1953.

2. That the property involved was not being used in Washington County, Mississippi, on January 1, 1953, in carrying out work for a drainage district, a road district, a levee district, bridge building or any other kind of contracting work.

3. That the property involved, together with approximately $750,000.00 of like property, was brought into Washington County, Mississippi, in the fall of 1952 for the temporary purpose of being overhauled and shipped out of the State of Mississippi, said $750,000.00 of like property having been shipped out of the State of Mississippi prior to January 1, 1953.

Record pp. 3-10

The Circuit Court affirmed the action of the Board of Supervisors denying the objection of the appellant to the assessment. (Record pp. 41-42)

Within the time and in the manner provided by law the appellant appealed to the Supreme Court of the State of Mississippi from the decision of the Circuit Court of Washington County, Mississippi. In the Supreme Court the appellant contended that the property involved was not taxable in Washington County, Mississippi, (1) under the general rule that tangible personal property cannot be taxed in a state other than the domicile of the owner unless it has acquired a more or less permanent location there and not merely a transient or temporary one, 51 *Am. Jur. p.* 468, *Taxation,* Section 453; (2) under the decision of the Supreme Court of Mississippi in the case of *State ex rel Knox v. Union Tank Car Co.* 151 *Miss.* 797, 119 *So.* 310, wherein that Court followed the decision of the Supreme Court of the United States in the case of *Marye v. B. & O. R. R. Co.,* 127 *U. S.* 117, 8 *S. Ct.* 1037, 32 *L. Ed.* 94, holding that the situs of tangible personal property is the domicile of the owner and such property is not taxable in a foreign state until such state enacts a statute fixing its taxable situs there; and (3), under the Mississippi statute, *Section* 9747, *Volume 7A, Mississippi Code of* 1942, (*Recompiled*), fixing the taxable situs of tangible personal property in the County where located on the first day of the taxable year provided it shall be kept there permanently or for the greater portion of such year, or if engaged in doing contracting work for drainage districts, for road districts, levee districts or any other kind of contracting work, then in the county where being used in carrying out such contracts on the first day of the taxable year.

On June 14, 1954, the Supreme Court of the State of Mississippi rendered an opinion affirming the judgment of the Circuit Court of Washington County, Mississippi. The opinion was that; "Clearly, the property of appellant

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does not come within any of the classifications set forth in Section 9747, Code of 1942. However, it appears that Section 9747 serves only to determine in which county of the various counties and districts in Mississippi the property will be taxable; and in no manner determines the actual tax liability," but that under the provisions of Section 9760, Code of 1942 (Recompiled) the property of appellant was subject to assessment in Washington County, Mississippi, for ad valorem taxes for the year 1953, because it was located there on the first day of January, 1953. The opinion made no response or reference to the general rule, or to the former decision of the Court, or to the decision of the Supreme Court of the United States, that tangible personal property cannot be taxed in a state other than the domicile of the owner unless it has acquired a taxable situs in such other state. A true copy of the opinion, which is reported in Advance Sheet, 73 So. 2d - No. 1, page 105, Southern Reporter, is hereto attached as Exhibit "A".

Final judgment pursuant to said opinion was entered by the Supreme Court of the State of Mississippi on August 2, 1954, affirming the judgment of the Circuit Court of Washington County, Mississippi, and $506.72 damages thereon. A certified copy of the judgment is hereto attached as Exhibit "B".

Petitioner shows that the jurisdiction upon appeal of the Supreme Court of the United States to review the judgment in this case is provided for by *Section* 1257, 28 *U. S. C. A.* as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being

> **repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."**

in that, the decision of the Supreme Court of the State of Mississippi, that, under the provisions of Section 9760, Mississippi Code of 1942 (Recompiled) and the facts in this case, the property of the appellant acquired a taxable situs in Washington County, Mississippi, for ad valorem taxes for the full year of 1953 because it was located there on the first day of January, 1953, constitutes a denial of the appellant's right of due process under the Fourteenth Amendment to the Constitution of the United States.

***Braniff Airways, Inc. v. Nebraska State Board of Equalization and Assessment, et al, decided June* 1, 1954, *reported in Advance Sheet, Vol.* 74, *No.* 16, *page* 757, *Supreme Court Reporter,* and the decisions cited and therein referred to.

A transcript of *Section* 9474, *Volume* 7, *Mississippi Code of* 1942 (*Recompiled*) and of *Section* 9760, *Volume* 7, *Mississippi Code of* 1942 (*Recompiled*) are hereto attached as Exhibits "C" and "D".

ANDERSON BROTHERS CORPORATION, *Petitioner*

By Philip Mansour
Ernest Kellner
Attorneys

EXHIBIT "A"

IN THE SUPREME COURT OF MISSISSIPPI

No. 39,401

ANDERSON BROTHERS CORPORATION

v.

BOARD OF SUPERVISORS OF WASHINGTON COUNTY

ARRINGTON, *Justice*:

Anderson Brothers Corporation, a foreign corporation, incorporated in the State of Texas, appeals from a judgment of the Circuit Court of Washington County affirming an assessment for ad valorem taxes for the year 1953 against appellant's machinery and equipment located in Washington County on January 1, 1953.

From the agreed facts, it appears that appellant is engaged primarily in the business of laying pipe lines for the transmission of natural gas. In August, 1952 appellant completed a contract in the State of West Virginia and shipped a large quantity of heavy equipment by barge line from West Virginia to its base of operations in Houston, Texas. While this equipment was in transit, appellant secured contracts in Kentucky and Michigan for which the equipment would be needed. In order to save time and transportation charges, the equipment was unloaded at Greenville, Mississippi, where appellant had purchased six acres of land for use in storage and repair of the equipment. From the time of its arrival in September, 1952 the equipment was being constantly stored, repaired, and shipped out January 1, 1953, when there was left in Washington County the property which was assessed to appellant in this suit.

Appellant was doing no work in Mississippi during 1953, and the machinery did not remain at Greenville for

the greater portion of the year. There is no dispute as to the value of the property. On January 16, 1953, the Tax Collector of Washington County, acting upon information that the property was about to be removed from Mississippi, levied a writ of attachment, issued out of the Circuit Court of Washington County, on the affidavit of the sheriff, without bond. Subsequently, the tax collector and the representative of appellant entered into an agreement whereby appellant agreed not to remove its property from the State until security had been posted, which security was later furnished and no further action was taken pursuant to the writ of attachment.

Appellant first contends that it is not liable for the taxes with which it is assessed as the property was not taxable in Washington County, Mississippi. Appellant argues that Section 9747, Code of 1942 (Recompiled), determines the tax liability of a nonresident of this State, and that unless appellant's property can be brought within the provisions of this section, appellant is not liable for the taxes with which it has been assessed. Section 9747 provides:

> "Real property shall be assessed in the county, municipality and district where situated; and all tangible personal property shall be assessed in the county, municipality or district in which the same may be on the day that said tax lien takes effect, provided it shall be kept in such county, municipality or district permanently, or for the greater part of such current year, and the list thereof may be rendered by an agent of the owner. All property subject to taxation not above mentioned shall be assessed in the county, municipality and district where the owner resides, and this shall include poll taxes.

"Provided, however, that all persons, firms and corporations doing contracting work for drainage districts, for road districts, levee districts, bridge building or any other kind of contracting work, shall have all their personal property used in carrying out such contracts assessed in the county and district where such property is being used on the first day of January of each year."

We are unable to agree with appellant in this contention. Clearly, *the property of appellant does not come within any of the classifications set forth in Section* 9747, *Code of* 1942. However, it appears that Section 9747 serves only to determine in which county of the various counties and districts in Mississippi the property will be taxable; and in no manner determines the actual tax liability.

In the instant case, appellant's tax liability is determined by Section 9760, Code of 1942 (Recompiled), which provides:

"Corporations and joint stock companies, how taxed: — The property of each corporation or joint stock company (whether organized under the law of this state or any other state or county) shall be assessed and taxed as that of a person; and the laws, providing for the assessment and collection of taxes on the property of persons, shall apply to the assessment and collection of taxes on the property of corporations and joint stock companies; . . . The president, secretary, or other officer of the same shall render, under oath, the tax list, in its name, of its property, real or personal or both, subject to taxation, to the assessor at the same time that persons are required to render their assessments of their property. *Its land and tangible personal property shall be*

assessed and taxed where situated on the first day of January of the year; . . . " (Emphasis ours)

As will be seen, this section provides that property of a corporation, whether organized under the laws of this state or not, shall be assessed and taxed and its tangible personal property shall be taxed and assessed "where situated on the first day of January of the year."

Appellant is a corporation. The property involved is tangible personal property, and the property was in Washington County, Mississippi, on the 1st day of January, 1953, the year for which the tax is assessed, and hence all of the statutory requirements are fulfilled.

We are of the opinion that under the facts of this case, the tax collector was authorized to seize the property by virtue of Section 9824, Mississippi Code of 1942 (Recompiled). We are further of the opinion that the appellant is liable for the taxes sought to be collected and that the judgment of the circuit court in upholding the validity of the assessment was correct. It follows that the judgment of the court below should be, and it is, affirmed.

AFFIRMED.

Roberds, P. J., and Hall, Kyle, and Ethridge, JJ., concur.

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EXHIBIT "B"

STATE OF MISSISSIPPI

To the Honorable the Circuit Court of Washington County — Greetings:

WHEREAS, on the 14th day of June, 1954 (the same being a day of the regular term of our SUPREME COURT, begun and held in the Court room, in the Capitol, in the City of Jackson, in said State, on the 1st Monday of March, in the year of our Lord, 1954, the following final Judgment was rendered by our SUPREME COURT, to-wit:

ANDERSON BROTHERS CORPORATION

No. 39,401

Vs.

BOARD OF SUPERVISORS OF WASHINGTON COUNTY

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Washington County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 29th day of January 1954 be and the same is hereby affirmed. It is further ordered and adjudged that the appellae do have and recover of and from the appellant the sume of $506.72 being damages at the rate of 5 per centum as allowed by statute, and from the appellant and Philip Mansour and Ernest Kellner, sureties on the appeal bond herein, all of the costs of this appeal to be taxed, etc.,

YOU ARE THEREFORE HEREBY COMMANDED, That such execution and further proceedings be had in

said cause, as according to right and justice, and the judgment of our SUPREME COURT and the law of the land ought to be had.

WITNESS, the Hon. Harvey McGehee, Chief Justice of our Supreme Court; also the signature of the Clerk and the seal of said Court hereunto affixed, at office, at Jackson, this the 2nd day of August, A. D. 1954

TOM Q. ELLIS, *Clerk*

By JULIA KENDRICK, *D.C.*

(SEAL)

STATE OF MISSISSIPPI

COUNTY OF WASHINGTON

I, C. E. Cocke, Clerk of the Circuit Court in and for said County and State, hereby certify that the within and foregoing instrument is a true and correct copy of original mandate as the same appears on file and of record in of the records in my office, at Greenville, Miss.

Witness my hand and official seal, this the 31st day of Aug. A. D. 1954.

(SEAL)

C. E. COCKE
Clerk of the Circuit Court
of Washington County, Miss.

By _____ D.

EXHIBIT "C"

"Sec. 9747. Where persons and property assessed. — Real property shall be assessed in the county, municipality and district where situated; and all tangible personal property shall be assessed in the county, municipality or district in which the same may be on the day the said tax lien takes effect, provided it shall be kept in such county, municipality or district permanently, or for the greater part of such current year, and the list thereof may be rendered by an agent of the owner. All property subject to taxation not above mentioned shall be assessed in the county, municipality and district where the owner resides, and this shall include poll taxes.

Provided, however, that all persons, firms and corporations doing contracting work for drainage districts, for road districts, levee districts, bridge building or any other kind of contracting work, shall have all their personal property used in carrying out such contracts assessed in the county and district where such property is being used on the first day of January of each year.

Sources: Codes, Hutchinson's 1848, ch. 8 art. 16 (6); 1857, ch. 3, art. 14; 1871, sec. 1667; 1880, sec. 472; 1892, sec. 3749; 1906, sec. 4258; Hemingway's 1917, sec. 6891; 1930, sec. 3123.

Cross References: Constitution, sec. 112; Motor Vehicle Taxes, sec. 9352-66.

ANNOTATIONS

Situs of aeroplanes for purposes of taxation. 153 ALR 264.

ATTORNEY GENERAL'S OPINIONS

See Ops. Atty. Gen., section 9745, supra.

JUDICIAL DECISIONS

Under this section, providing that every person shall be assessed in the municipality in which he resides at the time of the assessment, the assessment is to be made where the person actually resides at the time, though he has a residence at another place and votes there. *Millsaps v. Jackson*, 88 M 504, 42 So. 234. Personal property in the hands of a trustee is assessable at his residence or domicile. *Adams County v. Dale*, 110 M. 671, 70 So. 828. By a divided court it was held that a domestic corporation is not liable for taxes on the portion of its capital invested in shares of another domestic corporation. *Robertson v. Mississippi Valley Co.*, 120 M. 159, 81 So. 799. Assessment of gasoline steam shovel under description of 'machinery, tools, implements and equipment' held valid. *Byers Mach. Co. v. Cobb Bros. Constr. Co.*, 182 M 212, 179 So. 565."

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EXHIBIT "D"

"Sec. 9760. Corporations and joint stock companies, how taxed. — The property of each corporation or joint stock company (whether organized under the laws of this state or any other state or county) shall be assessed and taxed as that of a person; and the laws, providing for the assessment and collection of taxes on the property of persons, shall apply to the assessment and collection of taxes on the property of corporations and joint stock company shall be exempt from taxation and shall not be returned for assessment. The president, secretary or other officer of the same shall render, under oath the tax list, in its name, of its property, real or personal or both, subject to taxation, to the assessor at the same time that persons are required to render their assessments of their property. Its land and tangible personal property shall be assessed and taxed where situated on the first day of January of the year; and the accounts, notes, bonds, shares or certificates of stock, bank deposits, rights, money or other intangible property subject to taxation owned by a corporation or joint stock company organized under the laws of this state shall be assessed and taxed at its domicile; but any such intangible personal property, which would be exempt from taxation according to law, if owned by a person shall be exempt from taxation when owned by a corporation or joint stock company and shall not be returned for assessment. Such intangible personal property owned by a corporation or joint stock company organized under the laws of any state or county other than Mississippi shall be exempt from taxation and shall not be returned for assessment. This section shall not apply to persons, firms or corporations assessed by the State Railroad

Assessors or domestic insurance companies; but the shares or certificates of stock issued by a railroad, sleeping car, express, telephone or telegraph company or a freight car line or a railroad equipment company or a domestic insurance company, shall be exempt from taxation in the hands of the stockholder and shall not be returned for taxation by such stockholder."